



**BILLING CODE 5001-06**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 232**

**[Docket ID: DOD-2013-OS-0133]**

**RIN 0790-ZA11**

**Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents**

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, Department of Defense.

**ACTION:** Interpretive rule.

**SUMMARY:** The Department of Defense (Department) is interpreting its regulation implementing the Military Lending Act (the MLA). The MLA as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on “consumer credit” extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). This interpretive rule provides guidance on certain questions the Department has received regarding compliance with the July 2015 Final Rule.

**DATES:** Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Marcus Beauregard, 571-372-5357.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

In July, 2015, the Department of Defense (Department) issued a final rule<sup>1</sup> (the July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA)<sup>2</sup> primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as “consumer credit.”<sup>3</sup> Moreover, among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a “covered borrower,” modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. The Department is issuing this interpretive rule to inform the public of its views. The Department has chosen to provide this guidance in the form of a question and answer document to assist industry in complying with the July 2015 Final Rule. This interpretive rule does not substantively change the regulation implementing the MLA, but rather merely states the Department’s preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the *Federal Register*.

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<sup>1</sup> 80 FR 435560.

<sup>2</sup> 10 U.S.C. 987.

<sup>3</sup> 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

## II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p); TILA refers to the Truth in Lending Act (codified at 15 U.S.C. 1601 *et seq.*); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in 32 CFR 232.3(s); DMDC refers to the Defense Manpower Data Center.

1. *What types of overdraft products are within the scope of 32 CFR 232.3(f) defining “consumer credit”?*

*Answer:* The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered “consumer credit” for purposes of the MLA.<sup>4</sup> Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products.

The MLA regulation defines “consumer credit” as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four

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<sup>4</sup> The Department notes that the Consumer Financial Protection Bureau may from time to time revise Regulation Z. *See, e.g.*, 79 FR 77102 (Dec. 23, 2014) (proposing to revise the definition of finance charge with respect to charges imposed in connection with certain credit features offered in conjunction with prepaid card accounts). It is the Department’s intention that this part should wherever possible be interpreted consistently with Regulation Z as it evolves in order to harmonize the two regulations and thereby minimize compliance burden.

installments, with some exceptions. The exceptions include: residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under 12 CFR 1026.29); and credit extended to non-covered borrowers consistent with 32 CFR 232.5(b). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.<sup>5</sup>

The MLA regulation also defines “closed-end credit” and “open-end credit” with express references to the definitions of the same terms in Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services.<sup>6</sup> It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: it is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is

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<sup>5</sup> 80 FR 43563 (footnotes omitted).

<sup>6</sup> 80 FR 43579-43580.

used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit for the item and the imposition of a fee were previously agreed upon in writing. The supplementary information further states that other types of overdraft products not pursuant to a written agreement typically are not covered consumer credit “because Regulation Z excludes from ‘finance charge’ any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing.”<sup>7</sup>

Thus, whether or not a particular overdraft product or service is “consumer credit” under the MLA regulation depends on whether the product or service meets each element of the definition of “consumer credit” and whether an exception applies.

*2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to “consumer credit” under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?*

*Answer:* No. Section 232.3(f)(1) defines “consumer credit” as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to

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<sup>7</sup> 80 FR 43580.

the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional “cash-out” financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

3. *Under 32 CFR 232.4(b), are creditors permitted to waive fees or periodic charges at the end of a billing cycle or earlier for open-end credit, in order to prevent a borrower from being assessed a military annual percentage rate (MAPR) in excess of 36 percent during that billing cycle?*

*Answer:* Yes. Section 232.4(b) requires that a creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. In an open-end credit account, a covered borrower’s use of a line of credit might, under certain circumstances, give rise to the imposition of a combination of fees and/or periodic charges that would cause the MAPR to exceed the limit in § 232.4(b). A creditor can comply with § 232.4(b) by designing a combination of periodic rates and fees that cannot possibly result in an MAPR greater than 36 percent. Nevertheless, nothing in 32 CFR part 232 prohibits a creditor from complying by waiving fees or finance charges, either in whole or in part, in order to reduce the MAPR to 36 percent or below in a given billing cycle. Thus, a creditor could alternatively comply by not imposing charges in excess of 36 percent MAPR that would otherwise be permitted under the credit agreement.

4. *Are fees that a creditor is required to pay by law and passes through to a covered borrower required to be included in the calculation of the MAPR?*

*Answer:* 32 CFR 232.4(c)(1) details the charges that must be included in the calculation of the MAPR. Among the charges that must be included are finance charges associated with the consumer credit. Finance charges are defined by § 232.3(n) to mean a “finance charge” in Regulation Z. If such fees are considered “finance charges” under Regulation Z, then such fees must be included in the calculation of the MAPR, unless they are bona fide fees charged to a credit card account that are excludable under § 232.4(d). However, if the fees are not “finance charges” under Regulation Z, then they may be excluded from the calculation of the MAPR, provided they do not qualify for any of the other categories of charges listed under § 232.4(c)(1).

5. *For open-end credit, what constitutes a situation where the MAPR cannot be calculated because there is “no balance” in the billing cycle under 32 CFR 232.4(c)(2)(ii)(B)?*

*Answer:* Section 232.4(c)(2)(ii)(B) specifically provides that for open-end credit, if the MAPR cannot be calculated in a billing cycle because there is “no balance” in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except for a participation fee that complies with the limitations set forth in § 232.4(c)(2)(ii)(B). Because the provision is tied to whether the MAPR can be calculated based on whether there is a balance in the billing cycle, creditors that impose fees or charges that are excluded from the calculation of the MAPR during a particular billing cycle are not subject to the limitations in § 232.4(c)(2)(ii)(B) for that billing cycle, as there would be no MAPR to calculate whether or not there was a balance during the

billing cycle. For example, if a creditor charged a late fee for a late payment in accordance with its credit agreement with the covered borrower and in compliance with Regulation Z, the creditor may charge the fee, regardless of whether there is a balance in the billing cycle, because a late fee is not among the charges that are included in the calculation of the MAPR.

Furthermore, § 232.4(c)(2)(ii)(A) states that the MAPR shall be calculated following the rules set forth in 12 CFR 1026.14(c) and (d) of Regulation Z. Thus, the reference in § 232.4(c)(2)(ii)(B) to a situation in which the MAPR cannot be calculated in a billing cycle, because there is no balance, relates solely to the situation like the one described in 12 CFR 1026.14(c)(2), which is the only provision in 12 CFR 1026.14(c) and (d) that describes the inability to calculate an effective annual percentage rate when there is no balance in the billing cycle. 12 CFR 1026.14(c)(2) discusses how to compute an effective annual percentage rate when the charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle. Under 12 CFR 1026.14(c)(2), if there is no balance to which the charge is applicable, an effective annual percentage rate cannot be determined under the section. Similarly, § 232.4(c)(2)(ii)(B) relates to when finance charge imposed during the billing cycle is or includes a minimum, fixed or other charge not due to the application of a periodic rate, other than a charge with respect to a specific transaction charge, and there is no balance to which the charge is applicable.

6. *Is a minimum interest charge that a creditor may charge a covered borrower as part of a credit card account under an open-end (not home-secured) consumer credit plan*



*and that is generally disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii) eligible as a bona fide fee excludable from the calculation of the MAPR?*

*Answer:* Yes. 32 CFR 232.4(d)(1) provides that for consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR, provided it is a bona fide fee and reasonable for that type of fee. A minimum interest charge that a creditor will charge a covered borrower if the creditor charges interest during a particular billing cycle for a credit card account under an open-end (not home-secured) consumer credit plan is generally required to be disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii). Such a charge is not a periodic rate. Furthermore, neither of the categories of fees that are ineligible for the exclusion for bona fide fees (credit insurance premiums and fees for a credit-related ancillary product) applies to this type of charge. Consequently, a minimum interest charge that is generally disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii) (even if it does not exceed the threshold for required disclosure in the account-opening table under 12 CFR 1026.6(b)(2)(iii)) may be a bona fide fee excludable from the calculation of the MAPR if it meets the conditions for exclusion.

*7. Under 32 CFR 232.4(d)(3)(ii), may creditors rely on commercially compiled sources of information in conducting calculations necessary for the conditional reasonable bona fide credit card fee safe harbor?*

*Answer:* Generally, yes. The July 2015 Final Rule intends to provide a firm, yet flexible, adaptable standard allowing credit card issuers to exclude bona fide and

reasonable credit card fees from the calculation of the MAPR. Under the safe harbor set forth in § 232.4(d)(3)(ii), creditors are allowed to exclude a reasonable bona fide fee charged to a credit card account from the calculation of the MAPR, where that fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors, each of whose U.S. credit cards in force is at least \$3 billion in an outstanding balance (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed. As the Department stated in the supplementary information to the July 2015 Final Rule, the Department believes that information on credit card fees imposed by large credit card issuers is widely available. Moreover, the Department stated in the supplementary information to the July 2015 Final Rule that the amount of outstanding credit card loans is available in both Securities and Exchange Commission filings as well as Call Reports. Nevertheless, nothing in 32 CFR part 232 prohibits a credit card issuer from relying on information sources compiled in commercially available databases or other industry sources in making safe harbor calculations. However, the safe harbor under § 232.4(d)(3)(ii) is available only if the amount of the fee is actually less than or equal to an average amount of a fee for the same or a substantially similar product or service charge by 5 or more creditors each, of whose U.S. credit cards in force is at least \$3 billion in an outstanding balance (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

8. *Under 32 CFR 232.4(d), is it permissible to consider benefits provided by credit card rewards programs in determining whether the amount of a fee is (a) less than or equal to an average amount of a fee for a substantially similar product or service for purposes of comparison under the safe harbor and (b) reasonable overall?*

*Answer:* Generally, yes. Section 232.4(d)(1) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR, provided it is a bona fide fee and reasonable for that type of fee. Under § 232.4(d)(3)(i), whether a fee is reasonable is determined by comparison to fees typically imposed by other creditors for the same or a substantially similar product or service. Under § 232.4(d)(3)(iii), whether a fee is reasonable depends on other factors relating to the credit card account. Section 232.4(d)(3)(iv) further clarifies that whether a participation fee is reasonable may be determined in reference to whether a credit card offers additional services or other benefits. Moreover, the supplementary information to the July 2015 Final Rule explains that “the ‘reasonable’ condition for a bona fide fee is intended to be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to specific products or services and which vary depending upon the covered borrower’s own choices regarding the use of the card.”<sup>8</sup>

Under the Department’s flexibly applied conditional exclusion, creditors may use any reasonable approach in identifying whether a fee is substantially similar for purposes of comparison and reasonable overall. Thus, the Department’s policy, in this regard, permits a creditor to consider whether the benefits provided by a rewards program in

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<sup>8</sup> 80 FR 43585 (Jul. 22, 2015).

determining whether a fee is reasonable overall. Moreover, creditors may consider rewards program benefits in determining whether the amount of a fee is less than or equal to an average amount of a fee for a substantially similar product or service for purposes of the safe harbor in § 232.4(d)(3)(ii).

9. *Under 32 CFR 232.5(b), is an assignee permitted to avail itself of a covered borrower identification safe harbor if the assignee has maintained the original creditor's record of a covered borrower check?*

*Answer:* Yes. Under § 232.5(b) a creditor may conclusively determine whether credit is offered or extended to a covered borrower by assessing the status of a credit applicant, in accordance with the methods for checking the status of consumers discussed in § 232.5(b)(2). A creditor's timely covered borrower check is legally conclusive, so long as the creditor creates and thereafter maintains a record of the consumer's covered borrower status. Under § 232.3(i)(2) a creditor, by definition, includes the creditor's assignee. Thus, the Department's policy is to extend the covered borrower check safe harbor to a creditor's assignee, provided that the assignee continues to maintain the record created by the creditor that initially extended the credit.

10. *Does the historic lookback provision of 32 CFR 232.5(b)(2)(B) prevent creditors from adopting a risk management plan that includes periodically screening credit portfolios to discover changes to covered borrower status?*

*Answer:* No. Section 232.5 explains the methods available to creditors when determining a consumer's covered borrower status prior to or at the time the parties enter into a transaction or an account is created. The provision permits a creditor to use its own method to assess covered borrower status, and it provides a safe harbor to a creditor that

employs either of two available methods: using information obtained directly or indirectly from the DMDC database; or obtaining a consumer report from a nationwide consumer reporting agency (or a reseller of the same) containing a statement, code, or similar indicator describing that status. To benefit from the safe harbor provision, a creditor must determine a consumer's covered borrower status at or before the time of the transaction or the time an account is established and make a record of the determination. Section 232.5(b)(2)(B) prohibits a creditor from accessing the DMDC database after the time a consumer entered into a transaction or established an account for a specific purpose, namely "to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established." Therefore, the plain language of the regulation does not prohibit a creditor or assignee from accessing the DMDC database for other purposes, such as determining whether a previously covered borrower retains that status. However, as stated in § 232.7, other State or Federal laws providing greater protections to covered borrowers may apply to covered transactions under the MLA. Creditors should ensure compliance with any such laws that may apply to them and these transactions.

*11. Does the particular internet address referenced in 32 CFR 232.5(b)(2) limit the availability of a safe harbor for a covered borrower check conducted through alternative methods of accessing the MLA database provided by the Department?*

*Answer:* No. Under the safe harbor provided in § 232.5(b)(1), a creditor may conclusively determine whether credit is offered to a covered borrower by assessing the status of a consumer using information related to that consumer obtained from the database, maintained by the DMDC, for that purpose. Section 232.5(b)(2) references a

uniform resource locator (URL), more commonly known as an Internet address, as a convenience to assist the public in locating the DMDC MLA database. However, that particular URL address itself does not serve as a restriction on the method through which the DMDC MLA database is accessed. For technological reasons, the Department may from time to time revise the DMDC MLA URL through providing notice on the DMDC MLA web page. Therefore, a creditor who makes a determination regarding the status of a consumer by accessing the database maintained by the DMDC through a URL provided by the DMDC that is different from the one specifically referenced in § 232.5(b)(2) may still take advantage of the safe harbor in § 232.5(b)(1), so long as the creditor timely creates and thereafter maintains a record of the information so obtained as provided in § 232.5(b)(3).

Furthermore, the Department is currently developing a pilot project in collaboration with several financial service providers that anticipate a large volume of covered borrower checks. In this pilot project, the Department is experimenting with a direct connection that may improve access to the DMDC database for the financial services industry. This direct connection pilot project accesses the same DMDC database available through an internet query. A creditor may verify the status of a consumer by using the database maintained by the Department for that purpose, even though the creditor uses a method of accessing that database provided by the Department other than the particular URL listed in § 232.5(b)(2). Thus, a creditor who makes a determination regarding the status of a consumer under § 232.5(b)(2) by participating in the Department's direct connection pilot project (or a similar form of access should it be provided by the Department at a future date) is deemed conclusive with respect to that

transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained as provided in § 232.5(b)(3).

*12. How may a creditor orally provide the payment obligation disclosure required under 32 CFR 232.6(a)(3) to meet the requirements of 32 CFR 232.6(d)(2)?*

*Answer:* Section 232.6(a)(3) requires a creditor to provide to a covered borrower, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit, a clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or an account-opening disclosure (in the case of open-end credit) provided pursuant to the requirement to provide Regulation Z disclosures satisfies this obligation. Therefore, a creditor may orally provide the information in a payment schedule or an account-opening disclosure to a covered borrower. However, an oral recitation of the payment schedule or the account-opening disclosure is not the only way a creditor may comply with § 232.6(a)(3). A creditor may also orally provide a clear description of the payment obligation of the covered borrower by providing a general description of how the payment obligation is calculated or a description of what the borrower's payment obligation would be based on an estimate of the amount the borrower may borrow. For example, a creditor could generally describe how minimum payments are calculated on open-end credit plans issued by the creditor and then refer the covered borrower to the written materials the borrower will receive in connection with opening the plan. Alternatively, a creditor could choose to generally describe borrowers' obligations to

make a monthly, bi-monthly, or weekly payment as the case may be under the borrowers' agreements.

Neither the MLA nor the MLA regulation specifies particular content or format for the requirement of a clear, oral description of the payment obligation. Also, nothing in the MLA or the MLA regulation requires that the clear description of the payment obligation provided in writing must be the same as the oral disclosure, provided that both disclosures are clear and accurate. As explained in the supplementary information to the Department's July 2015 Final Rule, the Department's approach has been to interpret the MLA's oral disclosure requirement in a manner that provides creditors "straightforward mechanisms" that afford "latitude to develop the same (or consistent) systems to orally provide the required disclosures—regardless of the particular context..."<sup>9</sup> The requirement of a clear, oral payment obligation disclosure has sufficient breadth that creditors may choose a variety of acceptable oral disclosure compliance strategies. Thus, under the Department's approach, a generic oral description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts.

*13. If a creditor chooses to provide the information that is required to be provided orally by providing a toll-free telephone number, consistent with 32 CFR 232.6(d)(2)(ii)(B), when must the information be available to the borrower?*

*Answer:* Section 232.6(d)(2) requires a statement of the MAPR and a clear description of the covered borrower's payment obligation to be provided to the covered borrower orally. Creditors may satisfy this requirement by providing the information to the covered borrower in person or through a toll-free telephone number. If the creditor

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<sup>9</sup> 80 FR 43588.



decides to provide the borrower with a toll-free telephone number, the toll-free telephone number must be provided on i) a form the creditor directs the consumer to use to apply for the transaction or account, or ii) the written disclosure of the information that is required under § 232.6(d)(1). Since § 232.6(d)(2) permits creditors to provide oral disclosures by providing a toll-free telephone number, such information must be available from the time the creditor provides the toll-free telephone number. The difficulty of providing this information in a timely way through a toll-free telephone system is mitigated by the Department's interpretation of mandatory oral disclosures as allowing for a nonnumeric statement of the MAPR and a generic, clear description of the payment obligation. See § 232.6(c) and Question and Answer #12 of these Interpretations. Oral disclosures provided through a toll-free telephone system need only be available under § 232.6(d)(2)(ii)(B) for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure.

*14. In circumstances where Regulation Z allows a creditor to provide disclosures after the borrower has become obligated on a transaction (as in the case of purchase orders or requests for credit made by mail, telephone, or fax), does the MLA provide for similarly delayed disclosure?*

*Answer:* Yes. 32 CFR 232.6(a) states that a creditor shall provide mandatory loan disclosures, including “any disclosure required by Regulation Z,” to a covered borrower “before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit...” Section 232.6(a)(2) further states that “any disclosure required by Regulation Z . . . shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure...” In certain instances

Regulation Z allows a creditor to provide a disclosure after the borrower has become obligated on a transaction, as in the case of purchase orders or requests for credit made by mail, telephone, or fax under 12 CFR 1026.17(g). The MLA regulation's general timing requirement does not override more specific disclosure timing provisions in Regulation Z. The requirement in § 232.6(a) that any disclosure required by Regulation Z be provided only in accordance with the requirements of Regulation Z does not amount to a requirement that MLA-specific disclosures be separately provided to borrowers in advance of TILA disclosures. Thus, the disclosures required in § 232.6(a) may be provided at the time prescribed in Regulation Z.

*15. Under 32 CFR 232.8, within a single credit agreement may creditors permissibly use a “savings clause” that excludes covered borrowers from prohibited notice, waiver, arbitration, or other terms that would otherwise be applicable to non-covered borrowers?*

*Answer:* Yes. Section 232.8 makes it unlawful for any creditor to extend consumer credit in which the credit agreement imposes on a covered borrower a proscribed term or provision listed in § 232.8. However, nothing in the MLA regulation restricts the ability of creditors to impose on non-covered borrowers those provisions proscribed under § 232.8 for covered borrowers. Along these lines, the supplementary information in the July 2015 Final Rule explains that the Department “recognizes that many creditors likely would adopt disclosures and contract documents that would be designed to be provided to both consumers who are not entitled to the protections under the MLA and to covered borrowers.”<sup>10</sup> Under the MLA, a creditor may include a proscribed term under § 232.8, such as a mandatory arbitration clause, within a standard

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<sup>10</sup> 80 FR 43587 n. 238.

written credit agreement with a covered borrower, provided that the agreement includes a contractual “savings” clause limiting the application of the proscribed term to only non-covered borrowers, consistent with any other applicable law.

*16. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit the borrower from repaying a credit transaction by check or electronic fund transfer?*

*Answer:* No. As a general proposition the prohibition of a creditor’s use of a check or other method of access in § 232.8(e) does not in any way imply that a creditor cannot be paid. In no case does paragraph (e) prevent *covered borrowers* from tendering a check or authorizing access to a deposit, savings, or other financial account to repay a creditor. Section 232.8(e) also does not prohibit a covered borrower from authorizing automatically recurring payments, provided that such recurring payments comply with other laws, such as the Electronic Fund Transfer Act and its implementing regulations, including 12 CFR 1005.10, as applicable.

In contrast, § 232.8(e) prohibits a creditor from using the borrower’s account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower. Similarly, a creditor may not use a post-dated check provided at or around the time credit is extended that deprives the borrower of control over payment decisions, as is common in certain payday lending transactions.

Section 232.8(e)(1) and (2) further clarify that covered borrowers may tender checks and authorize electronic fund transfers by specifying permissible actions creditors

may take to secure repayment by covered borrowers. The exceptions address cases where a creditor requires a covered borrower to provide repayment in a certain way. Specifically, under § 232.8(e)(1), a creditor may require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law. The Department notes that 12 CFR 1005.10(e)(1) prohibits anyone from conditioning an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers (except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account). However, a preauthorized electronic fund transfer is defined under 12 CFR 1005.2(k) as an electronic fund transfer authorized in advance to *recur* at substantially regular intervals.

In addition, § 232.8(e)(2) clarifies that a creditor is permitted to require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law. While § 232.8(g) prohibits a creditor from requiring as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay an obligation, the regulation does not apply this restriction to a "military welfare society" or a "service relief society" as defined in 37 U.S.C. 1007(h)(4).

17. *Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit the borrower from granting a security interest to a creditor in the covered borrower's checking, savings or other financial account?*

*Answer:* No. The prohibition in § 232.8(e) does not prohibit covered borrowers from granting a security interest to a creditor in the covered borrower's checking, savings, or other financial account, provided that it is not otherwise prohibited by

applicable law and the creditor complies with the MLA regulation including the limitation on the MAPR to 36 percent. As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) prohibits a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower or using a post-dated check provided at or around the time credit is extended.

Section 232.8(e)(3) further clarifies that covered borrowers may convey security interests in checking, savings, or other financial accounts by describing a permissible security interest granted by covered borrowers. Thus, for example, a covered borrower may grant a security interest in funds deposited in a checking, savings, or other financial account after the extension of credit in an account established in connection with the consumer credit transaction.

*18. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit a creditor from exercising a statutory right to take a security interest in funds deposited within a covered borrower's account?*

*Answer:* No. Under certain circumstances federal or state statutes may grant creditors statutory liens on funds deposited within covered borrowers' asset accounts. For example, under 12 U.S.C. 1757(11) federal credit unions may "enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him." As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) serves to prohibit a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in

order to collect payments on consumer credit from a covered borrower or using a post-dated check provided at or around the time credit is extended. Section 232.8(e)(3) describes a permissible activity under § 232.8(e). However, the fact that § 232.8(e)(3) specifies a particular time when a creditor may take a security interest in funds deposited in an account does not change the general effect of the prohibition in § 232.8(e). Therefore, § 232.8(e) does not impede a creditor from exercising a statutory right to take a security interest in funds deposited in an account at any time, provided that the security interest is not otherwise prohibited by applicable law and the creditor complies with the MLA regulation, including the limitation on the MAPR to 36 percent.

*19. Under 32 CFR 232.3(f)(2)(ii) and 232.8(f) what methods of transportation are included within the definition of a “vehicle”?*

*Answer:* For purposes of the MLA, the term “vehicle” means any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, recreational vehicles (RVs), golf carts, or motor scooters.

### **III. Regulatory Impact**

*Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs,

harmonizing rules, and promoting flexibility. It has been determined that this is not a significant rule. This interpretive rule will not have an annual effect of \$100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This rulemaking will not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this rulemaking will not alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

*2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)*

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

This rule does not impose reporting and record keeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, "Federalism"*

This rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). It has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this rule preempts any State law or regulation. Therefore, Department did not consult with State and local officials because it was not necessary.

Dated: August 23, 2016.

Morgan Park,  
Alternate OSD Federal Register Liaison Officer,  
Department of Defense.  
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